

## **REMARKS**

In the Non-final Office Action (NOA) mailed October 2, 2006, all pending claims 1-24 are rejected. The Examiner rejected claims 1, 3, 4, 7, 10, 12, 13, 17-19 and 22 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,625,876 ("Gilhousen"). The Examiner rejected claims 2, 9, 11, 16 and 24 under 35 U.S.C. 103(a) as being unpatentable over Gilhousen in view of U.S. Patent No. 6,011,787 ("Nakano"). The Examiner rejected claims 5, 6, 8, 14, 15, 20, 21 and 23 under 35 U.S.C. 103(a) as being unpatentable over Gilhousen in view of U.S. Patent Publication No. 2002/0154610 ("Tiedemann").

### **Obviousness Rejection of Claims 1, 3, 4, 7, 10, 12, 13, 17-19 and 22**

Claims 1, 3, 4, 7, 10, 12, 13, 17-19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilhousen. Applicants respectfully traverse this rejection.

One basic requirement for establishing a *prima facie* case of obviousness is that the prior art reference(s) teach or suggest all claim limitations. MPEP § 2143. Also, there must be some suggestion or motivation to modify the reference or combine reference teachings. MPEP § 2143. The Office can satisfy its burden "only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *In re Fine*, 837 F.2d 1071, 1074 (Fed.Cir. 1988). In doing so, "implicit generalized findings" may not form the basis for establishing a motivation to modify a reference or combine reference teachings. See *Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 1363 (Fed.Cir. 2000).

In the present NOA, the Examiner admits that Gilhousen fails to disclose the forcing always-soft reverse link handoff claim limitation recited in each independent claim of the present invention (see second last paragraph on page 3 of NOA).

However, the Examiner states that Gilhousen mentions softer handoff conditions. From here, the Examiner alleges that it would have been obvious to “utilize the teaching of Gilhousen for [sic] achieving a system whereby signals from sectors of common base station are combined to provide an improved system performance.”

The Examiner has presented no objective evidence whatsoever supporting the Office’s obviousness rejection as it relates to the **forcing always-soft** reverse link handoff claim limitation. Clearly, either the Examiner has erroneously equated Applicants’ forcing always-soft reverse link handoff claim limitation with softer handoff or has impermissibly ignored this claim limitation altogether. Either way, the obviousness rejection is based on implicit generalized findings at best, and thus, is legally unsupported and clearly erroneous. As such, the Office has failed to satisfy its burden of proof, and thus, the obviousness rejection must be withdrawn as a matter of law.

In support of Applicants’ position, the Examiner is directed to col. 8, line 51 to col. 9, line 21 of Gilhousen, the section in Gilhousen primarily relied on by the Examiner in rejecting all pending independent claims (1, 10 and 17). In this section of Gilhousen, softer handoff is described between two sectors of a common base station X. Before softer handoff occurs, a mobile unit is serviced by a single sector (alpha) of the base station X. Particularly, the mobile unit receives information from base station X over a forward link and transmits information to base station X over a reverse link. After softer

handoff completes, the mobile unit is serviced by two sectors (alpha and beta). Both the mobile unit and base station combine signals received from the two sectors.

Clearly, softer handoff is implemented on both forward and reverse links in Gilhousen. Further, softer handoff occurs only if pilot signals received from sector beta are sufficiently strong (see step 2. at col. 8, lines 55-61 where pilot signal strength exceeds a predetermined threshold). That is, additional reverse and forward links are formed between base station X and the mobile unit via sector beta only if pilot signal strength is sufficient. Thus, the section in Gilhousen primarily relied on by the Examiner unequivocally discloses softer handoff on a conditional, not forced basis.

Applicants clearly do not claim softer reverse link handoff. In fact, Applicants readily acknowledge softer handoff was well known at the time their application was filed (e.g., see ¶¶ [0004-05] and ¶¶ [0031-32] in the present application). Applicants instead claim **forcing always softer reverse link handoff**. No pilot signal strength threshold need be satisfied as is the case with the Gilhousen teachings. Further, reverse link handoff conditions are always forced in the present claimed invention regardless of whether softer handoff occurs on the forward link (i.e., whether additional serving sectors are available at the serving base station). As such, Applicants' teachings are contrary to softer handoff, including the teachings of Gilhousen. Thus, the Gilhousen teachings, and softer handoff in general, teach away from the present claimed invention in that the present claimed invention forces always softer reverse link handoff regardless of forward link conditions or resources. To find otherwise would be to impermissibly ignore a claim limitation.

Claims 3, 4, 7, 12, 13, 18, 19 and 22 pending in the present application are each dependent from an independent claim that contains the forcing always softer reverse link handoff limitation. Accordingly, Applicants respectfully submit that Claims 1, 3, 4, 7, 10, 12, 13, 17-19 and 22 are patentable over the Gilhousen reference, and therefore request withdrawal of this rejection.

#### Obviousness Rejection of Claims 2, 9, 11, 16 and 24

Claims 2, 9, 11, 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilhousen in view of Nakano. Applicants respectfully traverse this rejection.

As discussed extensively above, the basis for rejecting all independent claims in the present application fails as a matter of law. Particularly, Gilhousen fails to teach or suggest the forcing always softer reverse link handoff limitation recited in each independent claim of the present invention. Nakano does not cure this fatal defect. Accordingly, Applicants respectfully submit that Claims 2, 9, 11, 16 and 24 are patentable over the Gilhousen and Nakano references, and therefore request withdrawal of this rejection.

#### Obviousness Rejection of Claims 5, 6, 8, 14, 15, 20, 21, and 23

Claims 5, 6, 8, 14, 15, 20, 21, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilhousen in view of Tiedemann. Applicants respectfully traverse this rejection.

For the reason stated in detail above, the basis for rejecting all independent claims in the present application fails as a matter of law. Particularly, Gilhousen fails to

teach or suggest the forcing always softer reverse link handoff limitation recited in each independent claim of the present invention. Tiedemann does not cure this fatal defect. Accordingly, Applicants respectfully submit that Claims 5, 6, 8, 14, 15, 20, 21, and 23 are patentable over the Gilhousen and Tiedemann references, and therefore request withdrawal of this rejection.

### Conclusion

In light of the foregoing remarks, Applicants believe that all pending claims stand in condition for immediate allowance. As such, Applicants look forward to the Examiner's next correspondence.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.



Mark R. Bilak  
Registration No.: 47,423

Dated: December 28, 2006

P.O. Box 5  
Raleigh, NC 27602  
Telephone: (919) 854-1844  
Facsimile: (919) 854-2084